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Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MANFRED HACKER,	:	Civil Case No.
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	VERIFIED DERIVATIVE COMPLAINT
DAVID PETERSCHMIDT; DONALD	:	FOR BREACH OF FIDUCIARY DUTY,
LISTWIN; JOSHUA PACE; STEVEN	:	AIDING AND ABETTING A BREACH
PETERS; AL SNYDER; SIMON	:	OF FIDUCIARY DUTY, UNJUST
WILKINSON; KENNETH DENMAN; BO	:	ENRICHMENT AND RECISSION
HEDFORS; GERALD HELD; MASOOD	:	
JABBAR; BERNARD PUCKETT,	:	
	:	<u>DEMAND FOR JURY TRIAL</u>
Defendants,	:	
	:	
-and-	:	
	:	
OPENWAVE SYSTEMS, INC.,	:	
	:	
Nominal Defendant.	:	
	:	

NATURE OF ACTION

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3 1. Plaintiff MANFRED HACKER, by his undersigned attorneys, submits this
4 Verified Derivative Complaint. This is a shareholders' derivative action brought in the name of
5 and for the benefit of nominal defendant Openwave Systems, Inc. ("OPENWAVE" or the
6 "Corporation") against certain current and former executive officers and members of the Board
7 of Directors of Openwave. The action arises from defendants' obtaining, approving, and/or
8 acquiescing in the issuance of stock options to senior executives that were unlawfully backdated
9 to provide the recipients with windfall compensation at the direct expense of OPENWAVE.

10
11 2. On May 22, 2006, OPENWAVE announced that it had received a request for
12 information from the SEC, relating to the Corporation's granting of stock options. This
13 announcement came on the heels of an in-depth report into option granting practices that
14 appeared in *The Wall Street Journal*. This report revealed that top executives at numerous high-
15 tech companies were backdating their options in violation of the Companies' own option
16 granting practices. Backdating occurs when executives backdate their options to an earlier,
17 more advantageous price – rather than paying the market price for the option on the day it is
18 issued. Arthur Levitt, former head of the SEC, has stated that backdating "represents the
19 ultimate in greed. It is stealing, in effect. It is ripping off shareholders in an unconscionable
20 way."
21

22 3. Backdating stock option grants to obtain beneficial exercise prices is akin to
23 picking lottery numbers on the day after the winning numbers are reported in the news. It is a
24 reckless and unlawful exercise that unjustly appropriates corporation assets and benefits.
25 Accordingly, all of the now unexercised options should be immediately cancelled and all of the
26 financial gains to the recipients who exercised such options should be returned to the
27 Corporation. Further, the Corporation's directors who administered and determined to grant
28

1 these options utterly failed to fulfill their fiduciary duties to the Corporation and they, too, are
2 accountable for that failure.

3 4. Backdating is the only conceivable explanation for the remarkable pattern of
4 options grants to OPENWAVE executives during the relevant period. Indeed, the results of a
5 statistical analysis of the grants to top executives recently published in *The Wall Street Journal*
6 concluded that the chances of these grants actually occurring as claimed were astronomically
7 low.
8

9 5. This action, on behalf of the Corporation, seeks to remedy the harms caused to
10 OPENWAVE by the backdating scheme and, in addition, to invalidate and nullify all executory
11 options contracts issued pursuant to the scheme. By means of the backdating scheme,
12 defendants caused the issuance of options bearing fraudulently low exercise prices to
13 OPENWAVE's top executives. Defendants also breached their duties as fiduciaries of the
14 Corporation. Defendants owed OPENWAVE duties of care, undivided loyalty, good faith, and
15 truthful disclosure. The Officer Defendants and the Non-Management Director Defendants
16 (both defined below) breached these duties by obtaining, approving, and/or acquiescing in the
17 issuance of backdated stock options to OPENWAVE executives. The Officer Defendants were
18 unjustly enriched by virtue of receiving fraudulently priced stock option grants. The Non-
19 Management Director Defendants – and in particular the members of the Compensation and
20 Human Resources Committee (the “Compensation Committee”) – by authorizing, approving
21 and/or acquiescing in the issuance of backdated stock options to the Officer Defendants, aided
22 and abetted the Officer Defendants' breach of fiduciary duty, and in particular the Officer
23 Defendants' duties of undivided loyalty to the Corporation.
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25

26 **PARTIES**

27 6. Plaintiff MANFRED HACKER currently owns OPENWAVE common stock.
28

1 7. Nominal Defendant OPENWAVE is a Delaware corporation with its principal
2 executive offices and place of business located in Redwood City, California. It is a leading
3 independent provider of open standards software products and services for the telecom industry.

4 8. Defendant David Peterschmidt ("Peterschmidt") is the Chief Executive Officer
5 of OPENWAVE and is Chairman of its Board of Directors. As an executive and a member of
6 the Board of Directors, he authorized, approved and received the backdated stock options grants
7 at issue in this case.

9 9. Defendant Donald Listwin ("Listwin") serves as OPENWAVE'S President and
10 is a Director. As an executive and a member of the Board of Directors, he authorized, approved
11 and received the backdated stock options grants at issue in this case.

12 10. Defendant Joshua Pace ("Pace") serves as the Chief Financial Officer at
13 OPENWAVE. As alleged herein, he received the backdated stock option grants at issue in this
14 case.

15 11. Defendant Steven Peters ("Peters") serves as a Vice President and the General
16 Counsel at OPENWAVE. As alleged herein, he received the backdated stock option grants at
17 issue in this case.

18 12. Defendant Al Snyder ("Snyder") serves as Executive Vice-President and Chief
19 Operating Officer at OPENWAVE. As alleged herein, he received the backdated stock option
20 grants at issue in this case.

21 13. Defendant Simon Wilkinson ("Wilkinson") serves as a Senior Vice-President at
22 OPENWAVE. As alleged herein, he received the backdated stock option grants at issue in this
23 case.

24 14. Defendants Peterschmidt, Listwin, Pace, Peters, Snyder and Wilkinson are
25 referred to collectively in this Complaint as the "Officer Defendants."
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1 15. Defendant Kenneth D. Denman (“Denman”) is a Director of OPENWAVE. He
2 also served on OPENWAVE’s Audit and Compensation Committees. As a member of the
3 Board of Directors and as a member of the Compensation Committee, he authorized and
4 approved the backdated stock option grants at issue in this case. As a member of the Audit
5 Committee, he also approved the Corporation’s false financial disclosures, as alleged herein.

6
7 16. Defendant Bo C. Hedfors (“Hedfors”) is a Director of OPENWAVE. He also
8 served on OPENWAVE’s Compensation Committee. As a member of the Board of Directors
9 and as a member of the Compensation Committee, he authorized and approved the backdated
10 stock option grants at issue in this case.

11 17. Defendant Gerald Held is a Director of OPENWAVE. As a member of the
12 Board of Directors, he authorized and approved the backdated stock option grants at issue in
13 this case.

14
15 18. Defendant Masood Jabbar (“Jabbar”) is a Director of OPENWAVE. He also
16 served on OPENWAVE’s Audit Committee. As a member of the Board of Directors, he
17 authorized and approved the backdated stock option grants at issue in this case. As a member of
18 the Audit Committee, he also approved the Corporation’s false financial disclosures, as alleged
19 herein.

20
21 19. Defendant Bernard Puckett (“Puckett”) is a Director of OPENWAVE. He also
22 served on OPENWAVE’s Compensation and Audit Committees. As a member of the Board of
23 Directors and as a member of the Compensation Committee, he authorized and approved the
24 backdated stock option grants at issue in this case. As a member of the Audit Committee, he
25 also approved the Corporation’s false financial disclosures, as alleged herein.

26 20. Defendants Denman, Hedfors, Held, Jabbar and Puckett are referred to
27 collectively in this Complaint as the “Non-Management Director Defendants.”
28

JURISDICTION AND VENUE

23. Venue is proper in this District because nominal defendant OPENWAVE is headquartered in this District and thus a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, occurred in this District. One or more of the defendants either resides in or maintains executive offices in this District.

24. The Officer Defendants purportedly received grants of stock options from the Corporation on unusually favorable dates over the past several years. These stock options were claimed to have been granted at or near the stock's annual low, or immediately after a substantial dip in the stock price followed by a substantial run-up. Analysis of this seemingly fortuitous pattern of stock option grants reveals that the pattern could not have resulted innocently. Rather, the only possible explanation is that these stock option grants were, in fact, ***backdated*** to allow the options' recipients to enjoy the largest possible returns at the expense of the Corporation.

5

1 26. At all relevant times, stock option grants to the Officer Defendants were required
2 to carry a strike price not less than the publicly traded closing price of the stock on the date of
3 grant. All executive compensation stock options to the Officer Defendants during the relevant
4 period were issued pursuant to the OPENWAVE Stock Option Plan.

5 27. It is now evident that the Individual Defendants did not comply with the
6 requirement that stock options granted to the Officer Defendants be priced on the date of grant
7 or issuance. The multi-year pattern of stock option grants on dates with highly favorable
8 exercise prices – invariably at historic stock price lows or right before a large stock price run-up
9 – indicates that the purported grant dates of the stock options were not the actual dates on which
10 the option grants were made. Rather, the pattern indicates that grants to executives were
11 repeatedly backdated to dates with exceedingly low stock prices.

12 28. Statistical analysis conducted by *The Wall Street Journal* demonstrates that it is
13 virtually impossible that the pattern of these grants occurred randomly. In its analysis, *The Wall*
14 *Street Journal* concluded that the odds of the pattern of grants received by these defendants
15 occurring by chance were in the millions. Only by backdating the stock option grants –
16 reviewing the share price in hindsight and retrospectively identifying the low points – could the
17 Individual Defendants have achieved this highly suspicious pattern of grants. The practice is
18 the equivalent of placing a wager on a horse race after the race has already been won and the
19 identity of the winning horse is known to all.

20 29. The backdating of stock option grants and the issuance of these options in the
21 amounts awarded to the Officer Defendants caused, and continues to cause, substantial harm to
22 the Corporation. Backdating stock option grants represents a direct and continuing waste of
23 valuable corporate assets. OPENWAVE is the counterparty to the option contracts with its
24 executives, and the proceeds obtained, and yet to be obtained, by these executives through
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1 exercising their backdated stock options are therefore siphoned, on a dollar for dollar basis,
2 directly from OPENWAVE. In effect, the backdated grants gave the Officer Defendants an
3 option to purchase OPENWAVE shares directly from the Corporation at an unfair and
4 improperly low price, with the Corporation making up the difference.

5
6 30. The practice of backdating stock options also substantially harmed, and
7 continues to harm, OPENWAVE by virtue of the fact that the practice is unlawful, deceitful,
8 and caused the Corporation to misreport its financial data. Under the relevant accounting rules,
9 options priced below the stock's fair market value upon award are considered compensation and
10 must, therefore, be treated by the Corporation as an expense directly impacting earnings. Upon
11 information and belief, OPENWAVE did not properly expense this compensation to the Officer
12 Defendants even though the backdated stock options at issue in this action were priced below
13 the fair market value of the Corporation's stock at the date of grant and issuance.

14
15 31. Further, the option backdating likely caused OPENWAVE to violate the Internal
16 Revenue Code. Indeed, compensation from exercised stock options issued under the backdating
17 scheme that was previously deducted, was in fact, nondeductible under Section 162(m) of the
18 Internal Revenue Code. Accordingly, the Corporation will likely be required to pay additional
19 taxes and interest associated with deductions it previously took for compensation associated
20 with such exercised stock options.

21
22 32. Backdating stock options also severely undermines the already grossly excessive
23 incentives that purportedly justified the use of stock options to compensate OPENWAVE's
24 management. Stock option compensation is intended to encourage management to maximize
25 the return to shareholders by aligning the interests of management with those of shareholders.
26 In contrast, by permitting the Officer Defendants to receive stock option grants backdated to
27 correspond to low points in the stock price, the Non-Management Director Defendants created
28

1 an absurd incentive for management to engineer dips and volatile swings in the stock price.
2 Further, the size and terms of the grants were so excessive that they incentivized management to
3 retire rather than work.

4 33. Issuing backdated stock options is unlawful, *ultra vires* and outside the scope of
5 legitimate and permissible business conduct. The practice is inherently manipulative and
6 involves a substantial likelihood that business records were intentionally falsified. Issuing
7 backdated stock options is, therefore, not a form of business conduct and is not protected by the
8 business judgment rule.
9

10 **DERIVATIVE ACTION ALLEGATIONS**

11 34. Plaintiff brings this action derivatively on behalf and for the benefit of
12 OPENWAVE to redress injuries suffered, and yet to be suffered, by the Corporation as a direct
13 and proximate result of the breaches of fiduciary duty and other legal violations alleged herein.
14 OPENWAVE is named as a nominal defendant solely in a derivative capacity.
15

16 35. Plaintiff is a holder of OPENWAVE common stock who is prepared to
17 adequately and fairly represent the interests of the Corporation and its shareholders in this
18 litigation.

19 36. Plaintiff presently owns OPENWAVE common shares. Plaintiff owned common
20 shares of OPENWAVE at the time of the injurious acts complained of herein.
21

22 37. The wrongful acts complained of herein subject, and will persist in subjecting,
23 the Corporation to continuing harm because the adverse consequences of the injurious actions
24 are still in effect.

25 38. The wrongful actions complained of herein were fraudulently concealed from
26 OPENWAVE shareholders.
27
28

1 39. This is not a collusive action to confer jurisdiction on a court of the United
2 States.

3 **DEMAND EXCUSED ALLEGATIONS**

4 40. Plaintiff has made no demand on the OPENWAVE Board of Directors to
5 institute an action in connection with the wrongs alleged herein. Such demand would be futile
6 and useless and is excused.

7
8 41. The wrongful acts complained of herein were self dealing, outside the scope of
9 the Board of Directors' authority, and served no legitimate business purpose. Such acts were
10 not, nor could they have been, the product of a valid or good faith exercise of business
11 judgment. Such acts were, moreover, unlawful and incapable of ratification. Accordingly, the
12 actions complained of herein are not protected by the business judgment rule, and the related
13 requirement of pre-suit demand on the Board of Directors is therefore inapplicable and excused.

14
15 42. The wrongful acts complained of herein were, furthermore, approved by and/or
16 performed for the benefit of an overwhelming majority of the Board of Directors as it is
17 presently constituted. As members of the Board of Directors during the period of backdating,
18 every single current Non-Management Director Defendant approved backdated stock options.
19 Moreover, a majority of the current Board of Directors' members either personally benefited
20 from backdated stock options, or were members of the Compensation Committee that was
21 directly responsible for authorizing the backdated stock options.

22
23 43. Accordingly, a majority of the members of the Board of Directors as presently
24 composed were either directly responsible for administering the unlawfully backdated option
25 grants challenged in this litigation, or directly and personally benefited from the backdated
26 grants. There is substantial reason to doubt that the current members of the Board of Directors
27 can and/or will pursue litigation to remedy harms resulting from their own performance of,
28

1 and/or acquiescence in, unlawful acts with no ascertainable connection to the exercise of
2 business judgment.

3 44. There is also substantial reason to doubt that the current members of the Board of
4 Directors are sufficiently independent to prosecute this action. The members of the Board of
5 Directors have themselves each individually gained tremendous wealth through their own
6 receipt and exercise of OPENWAVE stock options since at least the outset of this time period.
7

8 **CAUSE OF ACTION**

9 **COUNT I**

10 **AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**

11 45. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above as though fully set forth herein.

13 46. The Individual Defendants, by reason of their positions as fiduciaries of the
14 Corporation, owed duties of due care, undivided loyalty, good faith, and truthful disclosure.
15 The Individual Defendants violated and breached these duties. Each of the Officer Defendants
16 were recipients of backdated options bearing fraudulent prices. Each of the Non-Management
17 Director Defendants approved, ratified or were otherwise responsible for administering and/or
18 permitting the backdated options to be granted to the Officer Defendants.
19

20 47. The Directors, including the Officer Defendants, the Non-Management Director
21 Defendants and, particularly those directors who were members of the Compensation
22 Committee during the period that the backdated options were granted, each abandoned and
23 abdicated their fiduciary responsibilities to the Corporation. Their conduct could not have been
24 an exercise of good faith business judgment. Further, those directors who were members of the
25 Audit Committee breached their fiduciary duties to the Corporation by allowing the filing and
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1 dissemination of false and inaccurate financial statements not prepared in accordance with
2 GAAP.

3 48. As a direct and proximate result of the Individual Defendants' breach of
4 fiduciary duty and waste of corporate assets, the Corporation has sustained, and will continue to
5 sustain, substantial harm.

6 49. The Individual Defendants are liable to the Corporation as a result of the acts
7 alleged herein.
8

9 **COUNT II**

10 **AGAINST THE NON-MANAGEMENT DIRECTOR DEFENDANTS FOR AIDING AND**

11 **ABETTING A BREACH OF FIDUCIARY DUTY**

12
13 50. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above as though fully set forth herein.

15 51. By reason of their positions as fiduciaries of the Corporation, the Officer
16 Defendants owed duties of due care, undivided loyalty, good faith, and truthful disclosure. The
17 Officer Defendants violated and breached these duties.
18

19 52. By virtue of their role in creating and administering the Corporation's stock
20 option plan, and their approval and authorization of the stock options that were backdated as
21 alleged herein, the Non-Management Director Defendants were able to, and in fact did, render
22 aid and assistance to the Officer Defendants in their breach of fiduciary duty. The Non-
23 Management Director Defendants did so knowing, or but for their gross negligence would have
24 known, of the Officer Defendants' fiduciary breach.
25

26 53. As a direct and proximate result of the Non-Management Director Defendants'
27 aiding and abetting the Officer Defendants' breach of fiduciary duty, the Corporation has
28 sustained, and will continue to sustain, substantial harm.

54. The Non-Management Director Defendants are liable to the Corporation as a result of the acts alleged herein.

COUNT III

AGAINST THE OFFICER DEFENDANTS FOR UNJUST ENRICHMENT

55. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

56. As a direct and proximate result of the acts alleged herein, the Officer Defendants wrongfully deprived the Corporation of substantial wealth and were unjustly enriched thereby.

57. The Officer Defendants are liable to the Corporation as a result and should be required to disgorge their unjust gains and return them to the Corporation.

COUNT IV

AGAINST THE OFFICER DEFENDANTS FOR RECISSION

58. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

59. As a result of the acts alleged herein, all stock option contracts between the Officer Defendants and OPENWAVE entered into during the relevant period were obtained through the Officer Defendants' fraud, deceit, and abuse of control. Further, the backdated stock options and the shares underlying these options were not duly authorized by the Board, as was legally required, because they were not authorized in accordance with the terms of publicly filed contracts – including the Plan and the Officer Defendants' employment agreements – approved by OPENWAVE shareholders and filed with the SEC.

60. All stock option contracts between the Officer Defendants and OPENWAVE entered into during the relevant period should, therefore, be rescinded, with all sums paid under

1 such contracts returned to the Corporation, and all such executory contracts cancelled and
2 declared void.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff demands judgment as follows:

6 A. Awarding to the Corporation money damages against all Individual Defendants,
7 jointly and severally, for all losses and damages suffered as a result of the acts and transactions
8 complained of herein;

9 B. Awarding to the Corporation restitution from each of the Officer Defendants and
10 ordering disgorgement of all profits, benefits, and/or other compensation obtained by the
11 Officer Defendants as a result of the acts and transactions complained of herein;

12 C. Rescission of all option contracts granted to the Officer Defendants as a result of
13 the acts and transactions complained of herein and the cancellation, nullification, and
14 declaration as void of any and all current or future obligations of the Corporation under all
15 executory contracts obtained by the Officer Defendants as a result of the acts and transactions
16 complained of herein;

17 D. Formation of a constructive trust to hold all executory options contracts issued to
18 the Officer Defendants;

19 E. Awarding punitive damages against the Officer Defendants;

20 F. Awarding to Plaintiff the costs and disbursements of the action, including
21 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

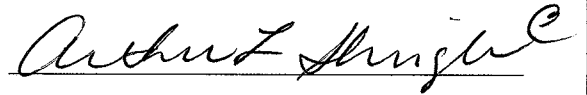
22 G. Granting such other relief as the Court may deem just and proper.

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24 **JURY DEMAND**

25 Plaintiff demands a trial by jury on all claims so triable.
26
27
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2 Dated: May 30, 2006

Respectfully submitted,

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4 

5 **SCOTT + SCOTT LLC**
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19 Geoffrey M. Johnson
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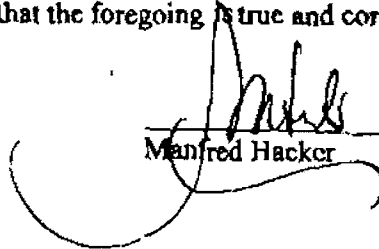
24 *Counsel for Plaintiff*
25
26
27
28

VERIFICATION

I, Manfred Hacker, hereby verify that I have reviewed the foregoing Verified Shareholder Derivative Complaint and have authorized its filing and the foregoing is true and correct to the best of my knowledge, information and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: May 30, 2006


Manfred Hacker

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

Manfred Hacker,
Plaintiff,

SUMMONS IN A CIVIL CASE

CASE NUMBER:

V.

David Peterschmidt, Donald Listwin, Joshua
Pace, Steven Peters, Al Snyder,
(See attachment for additional defendants)

TO: (Name and address of defendant)

Openwave Systems, Inc.
2100 Seaport Boulevard
Redwood City, CA 94063

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Arthur L. Shingler, Esq,
SCOTT+SCOTT LLC
600 B Street, Suite 1500
San Diego, CA 92101

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking

CLERK

DATE _____

(BY) DEPUTY CLERK

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹		DATE
Name of SERVER		TITLE
Check one box below to indicate appropriate method of service		
<div><input type="checkbox"/> Served Personally upon the Defendant. Place where served:</div> <div><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:</div> <div><input type="checkbox"/> Returned unexecuted:</div> <div><input type="checkbox"/> Other (specify):</div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div>Executed on _____ Date</div> <div>_____ Signature of Server</div> <div>_____ Address of Server</div>		
(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure		

MANFRED HACKER v. OPENWAVE SYSTEMS, INC.
SUMMONS ATTACHMENT

DAVID PETERSCHMIDT

DONALD LISTWIN

JOSHUA PACE

STEVEN PETERS

AL SNYDER

SIMON WILKINSON

KENNETH DENMAN

BO HEDFORS

GERALD HELD

MASOOD JABBAR

BERNARD PUCKETT

OPENWAVE SYSTEMS, INC.

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

Manfred Hacker,

Plaintiff,

vs.

DEFENDANTS

David Peterschmidt, Donald Listwin, Joshua Pace, Steven Peters, Al Snyder, Simon Wilkinson, Kenneth Denman, Bo Hedfors, Gerlad Held, Masood Jabbar, Bernard Pucker, and

Nominal Defendant OnenWave Systems, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

San Mateo, CA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Palm Beach County, FL

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Arthur L. Shingler, Esq.
Scott+Scott LLC600 B Street, Suite 1500
San Diego, CA 92101

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)☐ 1 U.S. Government Plaintiff☐ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding☐ Removed from State Court☐ Remanded from Appellate Court☐ Reinstated or Reopened☐ Transferred from Another district (specify)☐ Multidistrict Litigation☐ Appeal to District Judge from Magistrate Judgment**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Shareholder complaint for Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Unjust Enrichment and Recission; 28 U.S.C. 1332.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint: ☐
 UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

5/30/06

SIGNATURE OF ATTORNEY OF RECORD

Arthur L. Shingler

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a). F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.